IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1124 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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INAYAT ALI SHETH VORA

Versus

STATE OF GUJARAT

Appearance:
1. Special Civil Application No. 1124 of 2001

MR HR PRAJAPATI for Petitioner No. 1
MR HL JANI ASSTT GOVERNMENT PLEADER for Respondent No. 1-3

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 25/07/2001

ORAL JUDGEMENT

#. Heard learned advocate Mr.H.R.Prajapati, appearing on behalf of the petitioner and Mr.H.L.Jani, learned AGP for the respondents. In the present petition, the order of detention dated 6th October, 2000 which has been actually effected on 4th January, 2001 has been challenged by the petitioner under Article 226 of the Constitution of India. The order of detention has been passed by the District Magistrate, Bharuch under Section 3[1] of the PASA Act. The petitioner has been detained in District Jail Nadiad as Class-II detenu and the grounds of detention are communicated and supplied to the petitioner under Section 9[1] of the PASA Act by the detaining authority. The respondents have filed affidavit in reply.

#. Learned advocate Mr.H.R.Prajapati for the petitioner has raised various contentions challenging order of detention but according to him, one contention is enough to vitiate the order of detention. He submitted that representation filed by the petitioner dated 8th January, 2001 p.27 - Annexure-C to the petition, where in para-3, the petitioner has specifically requested the detaining authority to supply relevant papers and statements to the petitioner and also to supply copy of the certain documents, of which, the pages numbers were also given in the said representation. It is also submitted that the said representation has been received by the detaining authority on 10th January, 2001. A specific contention has been raised by the petitioner in Ground [p] of the petition. The respondents have submitted the reply and while dealing with the contentions of the petitioner, in para-16 on pg.37, it is mentioned that all the legible copies of the order of detention along with the grounds of detention were supplied to the petitioner while the injury certificate which the petitioner wanted to be supplied are the documents in the chargesheet filed before the court of JMFC at Amod and therefore, according to the detaining authority, said certificate has not been relied on or referred to at the time of passing of the order of detention. As against this, Mr.Prjapati, learned advocate has submitted that injury certificate is part of the charge sheet and when the copy of the charge sheet has been supplied then injury certificate which must have been relied on and referred to by the detaining authority, ought to have been supplied to the petitioner. He also submitted that statement of one Salim Ismailbhai Vora was also not supplied to the petitioner along with the grounds of detention, so also translation copy of pg.83 and 117 were also not supplied to the petitioner. Therefore, according to the learned advocate Mr.Prajapati

non supply of relevant material which have been referred to and relied at the time material time of passing the detention order and inspite of the demand, the detaining authority has not supplied all the material and therefore, it amounts to denying the legal right of the present petitioner of making effective representation as provided under Article 22 [5] of the Constitution of India. Learned advocate Mr.Prajapati has submitted that the detaining authority has replied the representation dated 8th January, 2001 by letter dated 18th January, 2001, wherein some of the documents at pg.83 and 117 are supplied in translated version but injury certificate in respect of Case No. 10 / 2000 and 88/ 2000 has not been supplied to the petitioner because same has been produced before the concerned Court and statement of Salim Ismail Vora dated 4th February, 2000 has not been supplied to the petitioner as the same is not available with the detaining authority. Therefore, in light of this fact, learned advocate Mr.Prajapati has submitted that not to supply relevant materials along with grounds of detention and even after specific demand, non supply of the documents, has adversely affected the legal right of the petitioner to make effective representation. Therefore, he relied upon decision of the Apex Court in reported decision 1992 SCC [1] and one more recent decision of this Court reported in 2000 [2] GLR 1777.

#. Mr.H.L.Jani, learned AGP appearing on behalf of the respondents has submitted that the respondents has filed detailed affidavit in reply and looking to the facts and circumstances as well as the material on record, the order of detention has been rightly passed by the detaining authority. He also submitted that there were compelling circumstances to pass the detention order, otherwise, the activities carried out by the petitioner would have certainly adversely affected maintenance of public order. He also submitted that injury certificate is not considered to be a part of the record and same has not been relied upon by the detaining authority and therefore, a copy of the injury certificate has not been supplied to the petitioner at the material time of supplying the grounds of detention. Learned AGP Mr.H.L.Jani has also submitted that looking to the entire record and offence registered against the present petitioner, the order or detention has been rightly passed which is legal and valid one and same is not required to be interfered with by this Court.

#. I have considered the submission of both learned advocates. However, the fact remains that the representation was submitted by the petitioner on 8th

January, 2001, wherein the documents were demanded in detail by the petitioner from the detaining authority. The said representation has been received by the detaining authority on 10th January, 2001 and specific contention has been raised in Ground [p] of the petition. The petitioner has received reply from the detaining authority on date 18th January, 2001, wherein translation of two documents at pg.83 and 117 were supplied to the copy of the injury certificate which has been so demanded by the petitioner in respect of Case No.10 / 2000 and 88/ 2000 has not been supplied and statement of Salim Ismail Vora dated 4th February, 2001 has not been supplied. Therefore, according to my opinion, when an injury certificate is a part of the charge sheet and copy of the charge sheet has been supplied to the petitioner then, it was the duty of the detaining authority to supply all the relevant papers attached to the chargesheet, otherwise, the petitioner was not able to make an effective representation in respect of the offence which has been alleged to have committed by the petitioner, therefore, obviously not to supply injury certificate and translated documents as well as statement of Salim Ismailbhai Vora which has adversely affected the legal and fundamental rights of the detenu from making an effective representation and therefore the view taken by the Apex Court in case of M.AHAMEDKUTTY VS. UNION OF INDIA reported case 1990 [2] SCC pg.1 para-19 and 20 are quoted as under :-

"19. The next submission is that of non-supply of the bail The next submission is that of non-supply of the bail application and the bail order. This Court, as was observed in Mangalbhai Motiram Patel v. State of Maharashtra, [1981] 1 SCR 852, has 'forged' certain procedural safeguards for citizens under preventive detention. The Constitutional imperatives in Article 22(5) are two-fold: (a) The detaining authority must, as soon as may be i.e. as soon as practicable, after the detention communicate to the detenu the grounds on which the order of detention has been made, and (2) the detaining authority must afford the detenu the earliest opportunity of making the representation against the order of detention. The right is to make an effective representation and when some documents are referred to or relied on in the grounds of detention, without copies of such documents, the grounds of detention would not be complete. The detenu has, therefore, the right to be furnished with the grounds of detention along with the

documents so referred to or relied on. If there is failure or even delay in furnishing those documents it would amount to denial of the right to make an effective representation. This has been settled by a long line of decisions: Ramachandra A. Kamat v. Union of India, [1980] (2) SCR 1072; Frances Coralie Mullin v. W.C. Kharnbra & Ors., [1980] 2 SCR 1095; Smt. Ichhu Devi Chararia v. Union of India, [1981] SCR 640; Pritam Nath Hoon v. Union of India, [1981] 1 SCR 682; Shri Tushar Thakkar v. Union of India, [1980] 4 SCC 499; Lallubhai Jogibhai Patel v. Union of India, [1981] 2 SCC 427; Kirit Kumar Chaman Lal Kundaliya v. Union of India, [1981] 2 SCC 436 and Smt. Ana Carelina D'Souza v. Union of India, [1981] Suppl. SCC 53.

20. It is immaterial whether the detenu already knew about their contents or not. In Mehrunissa v. State of Maharashtra, [1981] 2 SCC 709, it was held that the fact that the detenu was aware of the contents of the documents not furnished was immaterial and non-furnishing of the copy of the seizure list was held to be fatal. To appreciate this point one has to bear in mind that the detenu is in jail and has no access to his own documents. In Mohd. Zakir v. Delhi Administration, [1982] 3 SCC 2 16 it was reiterated that it being a Constitutional imperative for the detaining authority to give the documents relied on and referred to in the order of detention pari passue the grounds of detention, those should be furnished at the earliest so that the detenu could make an effective representation immediately instead of waiting for the documents to be supplied with. The question of demanding the documents was wholly irrelevant and the infirmity in that regard was violative of Constitutional safeguards enshrined in Article 22(5).

In one more recent decision of this Court in case of RAMESH @ BHANGARI BABAJI THAKOR [ZALA] V. STATE OF GUJARAT & OTHERS reported in 2000 [2] GLR 1777, relevant observations made in para-6 are quoted as under :-

"6. What transpires, therefore, is that despite the representation being made on 28-7-1999 and despite a direction from the Government dated 2-8-1999 to supply Forensic

Science Laboratory reports, the Detaining authority has not supplied all the Forensic Science Laboratory reports in respect of offences registered against the detenu and relied upon by the detaining authority while passing the order of detention. Thus, apart from a delay in supply of copies of the two F.S.L. reports between 2-8-99 and 31-8-1999 [which delay has remained unexplained] the Detaining Authority did not supply the F.S.L. report in respect of all the three offences though demanded by the detenu and directed by the Government to supply. The detaining authority was then again requested for supply of the third report which was supplied on 18-9-1999. The actual delay is, therefore, between 2-8-1999 and 18-9-1999. The Detaining Authority has filed the affidavit-in-reply. The affidavit-in-reply does not deal with any of these aspects, as to why in the instant case, F.S.L. reports were not given tot he detenu when the order of detention was passed. Secondly, it does not deal with the question as to why there was delay in supply of documents between 2-8-1999 and 31-8-1999. Thirdly, it does not deal with the question as to why only two F.S.L. reports on 31-8-1999 although there were three FSL reports in respect of the the cases relied upon by the Detaining Authority. Supply of only two F.S.L. reports on 31-8-1999 and supply of third report on 18-9-1999 has definitely caused a delay in making of a representation by the detenu. The delay has remained unexplained. The right of the detenu of making an effective representation is therefore infringed. There is gross non compliance of the requirement of Art.22 [5] of the Constitution of India, which requires of the requirement of Article 22[5] of the Constitution of India, which requires that the authority making the order has to `as soon as may be' communicate the grounds of detention and to afford the detenu the `earliest opportunity' of making a representation against the order. Non supply of FSL reports initially and then non supply of third report even after a demand being made has infringed the right of the detenu of making an effective representation. The detaining authority has failed to provide `earliest opportunity' to the detenu, earliest opportunity which the Detaining authority was required to provide."

#. In view of above observations made by the Apex Court as well as this Court and considering one more important aspect that the co-detenu - Ibrahimbhai Hasan Gori, who has also challenged the detention order passed by the very detaining authority on the same day, in Special Civil Application No. 11887 / 2000, wherein this Court [Coram : S.K.Keshote, J.] has passed order on date 17th February, 2001 and accordingly quashed and set aside the order of detention on the same ground which has been raised in the present petition. Therefore, considering all these material aspects on record and looking to the undisputed facts between the parties before this Court that relevant materials were not supplied along with grounds of detention and that too inspite of the demand, amounts to denial of the legal right of the petitioner from making an effective representation under Article 22[5] of the Constitution. Therefore, according to my opinion, the order of detention is required to be set aside.

#. In the result, the present petition is thus allowed. The order of detention dated 6th October, 2000, actually effected on 4th January, 2000 passed by the District Magistrate, Bharuch is hereby quashed and set aside. The present petitioner - detenu - Inayat Ali Sheth Vora who has been detained at Nadiad District Jail is ordered to be set at liberty forthwith if he is not required in any other case. Rule is made absolute with no order as to costs.

Date : 25-7-2001 [H.K.Rathod, J.]

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